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PROMOTION AND PROTECTION OF HUMAN RIGHTS

SCIENCE AND ENVIRONMENT

Question of the follow-up to the guidelines for the regulation of computerized personal data files: report of the Secretary-General prepared pursuant to Commission decision 1997/122

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Introduction

1. In its decision 1997/122 of 16 April 1997, the Commission on Human Rights, referring to the guidelines for the regulation of computerized personal data files (E/CN.4/1990/72) adopted by the General Assembly in its resolution 45/95 of 14 December 1990, and taking note of the report of the Secretary-General prepared pursuant to Commission decision 1995/114 of 8 March 1995 (E/CN.4/1997/67), decided:

(a) To request States and intergovernmental, regional and non-governmental organizations to cooperate fully with the Secretary-General by providing him with any relevant information on the application of the guidelines;

(b) To request the Secretary-General to continue to ensure the implementation of the guidelines in the United Nations system;

(c) To request the Secretary-General to report to it at its fifty-fifth session:

(i) On the application of the guidelines within the United Nations system;

(ii) On information collected from States and intergovernmental, regional and non-governmental organizations concerning the follow-up to the guidelines at the national and regional levels.

2. Pursuant to that decision, the Secretary-General, on 4 August 1997, addressed requests to United Nations organs, bodies, regional commissions, specialized agencies and related organizations for information on the application of the guidelines within the appropriate sections of the United Nations system.

3. On the same date, requests were also addressed to States and intergovernmental and non-governmental organizations for information concerning the follow-up to the guidelines at the regional and national levels.

4. By 8 September 1998, replies had been received from the following United Nations organs, bodies and specialized agencies: United Nations Office at Nairobi, Office of the United Nations High Commissioner for Refugees, United Nations Children's Fund, Food and Agriculture Organization of the United Nations, World Meteorological Organization, United Nations Industrial Development Organization. The two latter agencies stated that they did not have any input to offer concerning the subject matter for the preparation of the report.

5. No replies were received from Governments.

6. The following non-governmental organization submitted information: International Federation of Human Rights.

7. The present report contains a summary of the substantive replies received. Any additional replies will be issued as addenda to this document.

I. APPLICATION OF THE GUIDELINES WITHIN THE UNITED NATIONS SYSTEM

8. Only four United Nations entities submitted substantive replies. In 1997, 12 United Nations organs, bodies and regional commissions replied. In addition, 14 States replied (see E/CN.4/1997/67).

9. The United Nations Office at Nairobi stated that it was responsible for the management of human resources and maintenance of related data files for itself and for the United Nations Environment Programme (UNEP) and the United Nations Centre for Human Settlements (HABITAT). All guidelines for the regulation of computerized personal data files were strictly observed. Significant improvements with respect to the principles of accuracy and security had been achieved through the implementation of the International Management Information System (IMIS) in 1997.

10. The Food and Agriculture Organization of the United Nations (FAO) pointed out that it was currently working towards the establishment of rules within the Organization governing the collection, use or transfer of computerized personal information. However, currently no set of rules existed in FAO governing those issues, apart from two Administrative Circulars: No. 89/12, dealing with security policy on user access to FINSYS/PERSYS (finances and personnel), and No. 93/10, dealing with security principles for personal computers.

11. The Office of the United Nations High Commissioner for Refugees (UNHCR) submitted the following statement:

> "UNHCR collects personal data on three categories of people: asylum seekers, refugees and internally displaced persons (external); and personnel (internal). UNHCR does not have specific directives touching upon all aspects of guidelines for the regulation of computerized personal data files. For example, no particular directives seem to exist regarding the importance of ensuring the exactness of data on individual refugees or regarding the right to access for refugees wishing to view their own file. Moreover, although Louis Joinet's report suggests that information regarding the political persuasions and beliefs of persons should not be collected so as to avoid discriminatory practices, UNHCR cannot comply with such a recommendation since information regarding political affiliation or religious conviction may be pertinent to refugee status determination.
>
> "However, some internal directives do exist. UNHCR follows the general policy espoused in the Secretary-General's 1991 bulletin on archives and records management (ST/SGB/242). This bulletin issues certain rules regarding the preservation and servicing of paper and electronic data, and prohibits the removal or destruction of records without specific written authorization.
>
> "Two particular directives concern personnel files. With regard to confidentiality, employees of the Division of Human Resources

Management only have access to files in their area of responsibility. All medical information is strictly confidential. Secondly, staff members are accorded the right to examine their official status file once per year. Perusal of personal files must take place in the presence of a staff member of the Division of Human Resources Management.

"With regard to files on refugees, asylum seekers and internally displaced persons, UNHCR offices and staff are required to respect the confidentiality of certain information, including an individual's identity, age, sex, place of origin and political involvement. In addition, UNHCR offices are not to divulge any information about an individual's family, colleagues or friends. Finally, UNHCR disallows the publication of photographs of a refugee, asylum seeker or internally displaced person without the explicit consent of the person concerned, which is to be sought only after he or she has been duly counselled. Directives also specify and limit which UNHCR personnel have access to computerized data on refugees."

12. The United Nations Children's Fund (UNICEF) stated that the guidelines for the regulation of computerized personal data files had been taken into consideration and compliance with its principles was ensured, including access by the concerned staff member and the principle of security.

II. INFORMATION RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

International Federation of Human Rights

[Original: French]
[10 February 1998]

13. The International Federation of Human Rights Leagues (IFHR) has submitted the following information:

"The League for Human Rights, which is very much aware of the question of computerized data files, has been working particularly closely on the problems of interconnection of social and tax data files; transposition into French law of the European Directive on the protection of personal data; video surveillance; and cryptology."

1. Interconnection of social and tax data files

"The League for Human Rights is opposing the proposals to establish connections between the data files of different administrations, especially where the NIR number, i.e. the social security number, would be used as a common reference.

The League for Human Rights objects to the significance of this number, in the sense that its structure is such as to permit the indication of significant particulars, for example, sex but also race or religion (as happened with the National Statistical Service in 1941-42).

On the basis of the information at its disposal, the League for Human Rights concludes that interconnections, carried to extremes in some countries, lead to the phenomenon of self-exclusion of the persons concerned, to avoid appearing in certain data files.

Accordingly, our association accords human rights status to the right to anonymity, especially in relation to the State."

2. Transposition into French law of the Directive on the protection of personal data

"The transposition into French law of Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data is being studied. The Directive must be transcribed into French law before the end of 1998.

A commission, the Braibant Commission, is working on this and has given a hearing to, among others, the League for Human Rights. The Directive aims to harmonize the level of protection of personal data among Member States so as to permit the free movement of such data. The League for Human Rights considers that the Directive could lower the level of protection existing at the time of transcription in each Member State. Consequently, the League for Human Rights is insisting that all the already existing guarantees be strictly maintained or strengthened."

3. Video surveillance

"The question of video surveillance is indirectly affected by the discussion since although domestic law excludes video surveillance from the jurisdiction of the Commission nationale informatique et liberté (CNIL) when no data files are created, the Directive does not seem to be quite so clear on this point.

The League for Human Rights has vigorously resisted video surveillance. Our criticisms, in particular as regards the invasion of privacy and the fact that those who conduct the video surveillance are not subject to serious controls, were and remain perfectly pertinent.

The League for Human Rights objects not only to video surveillance but also to its permanence since the installation of a video surveillance system in a locality seems to be a matter that lies outside the realm of party politics. Thus, once installed the system stays put, regardless of political changes. This campaign may enter a new dimension in connection with the discussion of the transposition into French law of the Directive on the protection of personal data."

4. Cryptology

"By means of sophisticated software, cryptology makes it possible to maintain the confidentiality of a message transmitted over the network, in particular the Internet. The position of the League for Human Rights is that cryptology on the Internet should be completely liberalized.

In fact, cryptology is prohibited in varying degrees all over the world. Thus, in the United States it is forbidden to export cryptology software (equated with weapons of war). In France, cryptology is subjected to very restrictive conditions. As a result, it is impossible for an individual - without infringing a law with criminal penalties - to communicate secretly on the Internet.

For the time being, Prime Minister Lionel Jospin has promised - at a communications summer university - to liberalize the cryptology regime by the adoption of decrees based on the 1996 law establishing the principle of the trusted third party, who would hold the key used to decipher an encrypted message (key escrow). A very strong popular movement is developing in the United States in favour of the secrecy of Internet correspondence.

The views of the League for Human Rights, which have been reported, in particular, in the specialized press, are now or will shortly also be available on the Internet server of Radio France Internationale."